

Independent Contractor Certification

The department proposes the implementation of an independent contractor certification with the following criteria:

1. Change definition of an independent contractor to one who has a certificate.
2. Clarify that “main street businesses” do not need an IC certificate.
3. If have IC certificate it is conclusive that individual is an independent contractor.
4. The department will issue an IC certificate only to those who swear, via an affidavit, that they are free from control and direction, and attach documentation supporting they are established in an independent business. The department will simplify the supporting documentation requirements for renewal applicants.
5. Certified independent contractors are exempt from workers’ compensation.
6. The affidavit is to establish:
 - a. the individual recognizes they are performing their service free from control and direction;
 - b. the individual acknowledges they can be audited by the department for verification they are established in an independent business in the occupation which they are working as a certified IC;
 - c. the individual acknowledges they are not eligible and have specifically waived their entitlement to workers’ compensation benefits;
 - d. the applicant acknowledges they may not be entitled to the protections afforded in the Wage Payment Act, the Human Rights Act, or the provisions of the Unemployment Insurance Code;
 - e. the individual acknowledges they can be fined for working with employees and not owning a workers’ compensation policy.
7. All applicants will receive an IC certificate, provided they meet the requirements. Those who cannot provide enough documentation to earn 150 points or more will be required to purchase a workers’ compensation policy. See last page for point system. Those who accumulate less than 150 points will receive a certificate for term of their policy or 6 months. Extensions may be granted.
8. Every new applicant will be required to view the online educational piece and be able to answer the questions correctly with 90% accuracy. They may attempt this until they get it correct. The “test” can be taken at JS, ERD, on personal computers, or libraries.
9. A M of U will be available for all parties to use to define the relationship.
10. The department will require the submission of documentation by all IC applicants effective 07/01/2004 to minimize the impact of the new legislation in 2005.
11. The application fee will be increased to \$200 for a 2 year period.
12. The department has authority to suspend and revoke the IC certification if the individual does not prove they are established in an independent trade, occupation, or business.

13. The department will create an Internet based system for real time inquiry as to the status (approved, denied, suspended, revoked, or cancelled) of an individual, as well as an internal database for tracking and data gathering.
14. The department has authority to penalize an employer who hires certified ICs but exerts control over their work that is more than that which is necessary to ensure the bargained for end result.
15. The department receives 4 - 6 new FTEs to audit certificate holders and hiring agents.

Audits

The audits will:

1. Verify people on the jobsite have a certificate for the work they are performing.
2. Verify workers' compensation coverage is in place for employees.
3. Verify hiring agent treating ICs as ICs and not employees.

Desk audits will be performed upon new certificate applicants for verification they are established in an independent business, and upon receipt of complaints. Field audits will be performed on a random and complaint basis. Audits performed on the certificate holders will verify they have an established independent business. Audits performed on the hiring agents will verify they are not controlling the work of certified ICs. ICCU will maintain a database of all audits naming the individual, SS#, date, result of audit.

All applicants will be aware the department may perform a desk or field audit on their certificate at any time. The audit will require the certificate holder to complete a questionnaire and provide proof they are maintaining 150 points. The department may look some of the information up for the individual to minimize hassle, but initial applicants will be required to provide all their own documentation.

Field auditors will be available for job site reviews. We propose auditors be located in Bozeman, Great Falls, Helena, Missoula, Miles City, and Kalispell. The auditors currently employed in the Uninsured Employers Fund will be utilized for this purpose as well. Auditors will be available for onsite visits and have the authority to issue Cease and Desist Orders for hiring agents who do not have a workers' compensation policy but treat individuals as employees.

Education

The department proposes up to 25% mandatory education budget with a mass media campaign upon passage of legislation.

The educational program will encompass:

1. Radio and television advertising and announcements
2. Use of M of U
3. Internet power point presentation and test
4. Video presentation for classroom setting – with worksheet and test
5. Personal presentations
6. Newsletters, newspapers, and bulletins

Fees

The cost for the IC Certificate will be \$200 for a two-year period. The department proposes excess Fund balance, if any, be transferred to the Uninsured Employers Fund (UEF). This would assist the UEF in paying benefits they will be liable for when a certificate holder is suspended or revoked. The UEF will be liable for claims during the time a IC status has been revoked or5 suspended, and the hiring agent is notified and able to respond appropriately. While our goal will be to minimize the amount of time there may be an uninsured period, we recognize there will be exposure for the UEF.

Fiscal Impact			
Current costs	360,000	# of exemptions	10,000
new FTEs (6)	300,000	Cost	200
Total personal costs	660,000	Total Revenue	2,000,000
plus education costs	500,000	less expenses	1,660,000
plus computer system	500,000		
Total Expenses	1,660,000	Fund Balance	340,000

Penalties

1. Up to \$1,000 for falsely obtaining an IC certificate, per occurrence. Individuals who are guilty of this are prohibited from receiving a certificate for 1 year. Violations include:
 - a. Perform service as an IC without workers' compensation if the IC has employees;
 - b. Failing to report to the hiring agent that the certificate is not in effect;
 - c. Transfer a valid certificate to an unregistered IC alter or falsify a certificate, or allow another to work under a certificate issued to another;
 - d. Misrepresent that person's status as an IC;
 - e. Misrepresent that person's status as an IC by claiming workers' compensation, unemployment, wages, or, fringe benefits.
2. Up to \$1,000 per day, per occurrence, for a hiring agent who improperly retains ICs and uses them as employees.

Appeal process: 39-71-401(f) – 39-71-415(3)

1. IC certificate denied, suspended or revoked
 - a. Mediation with labor mediator
 - b. Workers' compensation court
2. dispute between IC and hiring agent
 - a. ICCU
 - b. mediation with labor mediator
 - c. workers' compensation court
3. dispute between ICCU and hiring agent
 - a. mediation with labor mediator
 - b. workers' compensation court

Statutory Changes – This is a list of conceptual changes. A draft of language changes will be available on June 3, 2004.

1. Definition of independent contractor is one who has a certificate issued by the department.
2. Certificates are issued to those who meet a and b. “A” is established through affidavit but is the obligation of the hiring agent. “B” is established by the department through documents submitted by applicant.
3. Independent contractors must be covered under a workers’ compensation policy, unless they meet the 150-point requirement.
4. Department has authority to suspend, revoke, and deny.
5. Department has authority to penalize certificate holder and hiring agent.
6. Department has right to review relationship at any time.
7. Employer is not required to make inquiry that individual is an IC if the individual has a certificate.
8. Add guidelines for determining whether an IC certificate is needed to statute – for example, main street business does not need an IC certificate.
9. Department has authority to issue Cease and Desist on hiring agent when they are treating certificate holders as employees, only if they don’t have workers’ compensation. Hiring agent can be penalized from the point the department notifies them they are violating “a”. Laundry list of factors in statute. (See Colorado statute)
10. Definition of employee - exclude certificate holder from definition of employee.
11. Declaration of public policy changes.

Independent Contractor Certificate Point System

Individuals who can submit documentation that totals 150 points will receive an Independent Contractor Certificate. Those who cannot accumulate 150 point must purchase a workers' compensation policy. All applicants must pass a computer-generated test about independent contractors. A maximum of two items may be submitted for points per category. Point values for item provided for certification:

- | | | |
|-----|---|----------------------|
| 1. | WC, UI, Revenue accounts for employees | 100 points |
| 2. | Memo of Understanding or a Contract containing: | 60 points |
| | a. Describes the body of work to perform | |
| | b. Complete or partial payment % basis | |
| | c. Ending date of contract | |
| | d. Liability for failure to complete (both) | |
| | e. Identifies who provide materials & supplies | |
| | f. Signed by both parties | |
| 3. | List of equipment & tools with approximate value | 60 points |
| | a. Rental or lease agreement | |
| | b. Business equipment tax – county document | |
| 4. | Liability insurance policy | 60 points |
| 5. | Bonding | 60 points |
| 6. | Business location, lease or rental agreement | 60 points |
| 7. | Business Tax forms or records Sched C, E, F, or K | 60 points |
| 8. | Trucking company lease agreement | 60 points |
| 9. | Form 1099's | 30 points ea; 60 max |
| 10. | Partnership agreement written and signed by all | 30 points |
| | a. intent to form | |
| | b. contribution by all parties | |
| | c. joint proprietary interest and right of mutual control | |
| | d. sharing of profit/loss | |
| 11. | Application or business license or permit | 30 points |
| 12. | Professional license | 30 point |
| 13. | Business structure registered with SOS | 30 point |
| 14. | Registered name of business with SOS | 30 points |
| 15. | Educational certification | 30 points |
| 16. | Advertises services in a newspaper, phone book, Internet,
or on a professional list or affiliation | 30 points ea; 60 max |
| 17. | 2 or more bids or estimates | 15 points ea; 60 max |
| 18. | Fed Employer Identification Number FEIN | 15 points |
| 19. | Business bank account | 15 points |
| 20. | Telephone bill in business name | 15 points |
| 21. | Credit card – charge account in business name | 15 points |
| 22. | Printed invoices, cards, brochures, hats, shirts | 15 points ea; 30 max |
| 23. | Advertises using sign on vehicle, in yard, bulletin
boards, corner lamp post, flyers | 15 points each |

24. Standard billing invoices

15 points each